

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 NATHAN BILL WIGGS,

11 Plaintiff,

12 v.

13 ADAM CLARNO, et al.,

14 Defendants.

CASE NO. 3:18-CV-05815-RJB-DWC

ORDER DENYING MOTION FOR
COURT-APPOINTED COUNSEL

15 The District Court referred this 42 U.S.C. § 1983 action to United States Magistrate
16 Judge David W. Christel. On April 1, 2019, Plaintiff Nathan Bill Wiggs filed a Motion for
17 Appointment of Counsel. Dkt. 50.

18 No constitutional right to appointed counsel exists in a § 1983 action. *Storseth v.*
19 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S.*
20 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
21 discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may
22 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
23 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
24

1 grounds, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the
2 Court must evaluate both “the likelihood of success on the merits [and] the ability of the
3 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”
4 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (*quoting Weygandt v. Look*, 718
5 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an insufficient grasp
6 of his case or the legal issues involved and an inadequate ability to articulate the factual basis of
7 his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

8 In Plaintiff’s Motion, he states he is unable to afford an attorney and his imprisonment
9 greatly limits his ability to litigate this case. Dkt. 50. Plaintiff contends he has limited access to
10 legal materials and has limited legal knowledge. *Id.* Plaintiff also states counsel will “better
11 enable” Plaintiff to present his case. *Id.* at p. 2.

12 At this time, Plaintiff has not shown, nor does the Court find, this case involves complex
13 facts or law. Plaintiff has also not shown he is likely to succeed on the merits of his case or
14 shown an inability to articulate the factual basis of his claims in a fashion understandable to the
15 Court. For example, Plaintiff clearly articulated his claims in his Complaint and various
16 documents filed with the Court. *See* Dkt. 7, 32, 34, 51, 52. The Court also notes “Plaintiff’s
17 incarceration and limited access to legal materials are not exceptional factors constituting
18 exceptional circumstances that warrant the appointment of counsel. Rather, they are the type of
19 difficulties encountered by many *pro se* litigants.” *Dancer v. Jeske*, 2009 WL 1110432, *1 (W.D.
20 Wash. Apr. 24, 2009). While Plaintiff may be able to better litigate this case with appointed
21 counsel, that fact, alone, does not establish an extraordinary circumstance warranting the
22 appointment of counsel. *See Rand*, 113 F.3d at 1525; *Wilborn*, 789 F.2d at 1331. Therefore, the
23 Court finds Plaintiff has failed to show the appointment of counsel is appropriate at this time.

1 Accordingly, Plaintiff's Motion (Dkt. 50) is denied without prejudice.

2 Dated this 11th day of April, 2019.

3 

4 David W. Christel
5 United States Magistrate Judge
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24